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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,150	02/14/2001	Ralph E. Frazier	8686	2319

26884	7590	02/19/2004	

PAUL W. MARTIN
LAW DEPARTMENT, WHQ-5E
1700 S. PATTERSON BLVD.
DAYTON, OH 45479-0001

EXAMINER
YIGDALL, MICHAEL J

ART UNIT	PAPER NUMBER
2122	

DATE MAILED: 02/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *10 December 2003*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-10* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-10* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *30 May 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

1.   This Office action is in reply to applicant's response and amendment dated 10 December

2003. Claims 1-10 remain pending.

Double Patenting

2.   The provisional rejections to claims 1-10 under the judicially created doctrine of

obviousness-type double patenting is withdrawn in view of the terminal disclaimer filed 10

December 2003 (Paper No. 7).

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

4.   Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No.

6,282,560 to Eilert et al. (hereinafter Eilert) in view of U.S. Pat. No. 5,590,056 to Barritz.

With respect to amended claim 1, Eilert discloses a computer implemented method of

controlling system performance (see column 1, lines 23-28).

Eilert does not expressly disclose the step of:

(a) recording operating software events as they occur, in order to provide operating

software program scheduling information relating to interactions between the operating system

software and the programs and tasks managed by the operating system software.

Eilert does show processing or analyzing processor use data, a type of scheduling information (see column 6, lines 34-43).

Barritz discloses the step above in terms of monitoring events as they occur and recording them to a log (see FIG. 5 and column 6, lines 54-57), thereby providing information relating to job-scheduling information for each module or task (see column 6, lines 58-64), for the purpose of enabling the identification of software usage patterns.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend the system of Eilert with the event recording features taught by Barritz, for the purpose of enabling the identification of software usage patterns.

Eilert further discloses the steps of:

(b) analyzing the operating software program scheduling information (see column 6, lines 34-43, which shows the steps of processing or analyzing processor use data, a type of scheduling information, and calculating performance indexes); and

(c) adjusting defined parameters to modify system performance (see column 6, lines 34-43, which shows the step of adjusting system resource controls to attain a level of performance).

With respect to original claims 2-4 and amended claim 5, to which no new features or limitations has been added, see the rejections set forth in the Office action mailed 10 September 2003 (Paper No. 5).

With respect to amended claim 6, Eilert discloses a computer system for capturing operating software scheduling information during execution of said operating software (see for

example column 8, lines 36-46, which shows the capture of real-time service data during

execution) comprising:

(a) a processor for receiving and transmitting data (see column 1, lines 23-28, which

shows a processor used for real-time data streams); and

(b) a memory coupled to the processor, the memory having stored therein sequences of

instructions which, when executed by the processor, cause the processor to analyze the operating

software scheduling information and adjust defined parameters to modify system performance

(see column 6, lines 34-43, which shows the steps of processing or analyzing processor use data,

calculating performance indexes, and adjusting system resource controls to attain a level of

performance; see also column 13, lines 46-53, which shows computer readable program code,

i.e. sequences of instructions; note that memory for storing the instructions is inherent to the

computer system).

Eilert does not expressly disclose the limitation wherein the processor records operating

software events as they occur, in order to provide operating software program scheduling

information relating to interactions between the operating system software and the programs and

tasks managed by the operating system software.

Eilert does show processing or analyzing processor use data, a type of scheduling

information (see column 6, lines 34-43).

Barritz discloses the limitation above in terms of monitoring events as they occur and

recording them to a log (see FIG. 5 and column 6, lines 54-57), thereby providing information

relating to job-scheduling information for each module or task (see column 6, lines 58-64), for

the purpose of enabling the identification of software usage patterns.

It would have been obvious to one of ordinary skill in the art at the time the invention

was made to extend the system of Eilert with the event recording features taught by Barritz, for

the purpose of enabling the identification of software usage patterns.

With respect to original claims 7-10, see the rejections set forth in the Office action

mailed 10 September 2003 (Paper No. 5).

Response to Arguments

5.   Applicant contends that Eilert does not record operating software events in order to

provide operating software program scheduling information and analyzing that information, as

recited in amended claims 1 and 6.

However, Barritz discloses monitoring events as they occur and recording them to a log,

thereby providing job-scheduling information for each module or task (see FIG. 5 and column 6,

lines 54-64), as shown above. Furthermore, Eilert discloses processing or analyzing data that is

considered a type of scheduling information (see column 6, lines 34-43), also as shown above.

Conclusion

6.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

7.　　Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Michael J. Yigdall whose telephone number is (703) 305-0352.

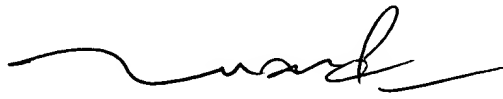The examiner can normally be reached on Monday through Friday from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tuan Q. Dam can be reached on (703) 305-4552. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MY

Michael J. Yigdall
Examiner
Art Unit 2122

mjy
February 11, 2004

TUAN DAM
SUPERVISORY PATENT EXAMINER